Supreme Court, U.S.
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No. 03-682

In The

Supreme Court of the United States

MONTGOMERY BLAIR SIBLEY,

Petitioner,

vs.

BARBARA SIBLEY,

Respondent.

On Petition For Writ Of Certiorari To The District Court Of Appeal Of Florida, Third District

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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STATEMENT

There exists no compelling reason for this Court to grant this petition. This case arises from a post-judgment dissolution of marriage proceeding in a Florida state court.[1] No federal issues were injected into this proceeding before the Florida courts and the matter was decided based upon existent Florida law. The constitutional issue brought before this Honorable Court was never raised below and is concocted for the sole purpose of manufacturing jurisdiction in this Court.[2] The Florida Third District Court of Appeal's ruling was proper in all respects, did not deny Petitioner/Former Husband due process of law, and Respondent respectfully urges this Honorable Court to deny the Petition for Writ of Certiorari.

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[1] The instant petition is the latest in a never ending torrent of litigation brought by Former Husband against Former Wife to satisfy his "stubborn, self-immolating hatred of and vendetta against his ex-wife." *Sibley v. Sibley*, 833 So.2d 847 (Fla. 3DCA 2002), *rev. den.* 854 So.2d 660 (Fla. 2003). This vendetta includes twenty-three (23) appeals at the state court level, four (4) federal civil actions, and three (3) federal appeals brought against the Former Wife. In addition there have been multiple federal civil actions brought by Former Husband against members of the state judiciary including two (2) trial court judges, multiple judges of the Florida Third District Court of Appeal, and the justices of the Florida Supreme Court.

[2] Where the constitutional issue has not been raised and considered below, this court has declined to consider the issue. *See: Bankers Life and Casualty Company v. Crenshaw*, 486 U.S. 71, 108 S.Ct. 1645, 100 L.Ed.2d 62 (1988).

RESPONSE TO PETITIONER'S STATEMENT OF THE CASE

The matters presented to the trial court were motions for contempt for, *inter alia*, Former Husband's wilful failure to pay child support. After an extensive evidentiary hearing the trial court entered an order adjudicating Former Husband in contempt of court for failure to pay child support. App., *Infra* at 1-5. In this order the trial court found in pertinent part:

> F. . . . The Former Husband testified that his present gross income was $37,500 annually from his employment (business owned by his father), and that his current wife's gross income was also in excess of $30,000. Additionally, the Former Husband continues to practice law and has taken in retainers of more than $17,000 so far this year. The Former Husband has not produced one check or bank statement. Instead he has produced computer generated ledger sheets allegedly from Alodus Corporation, no paychecks for him or his wife, no credit card statements, no bank statements or tax returns.
>
> G. The Former Husband is currently living in a home his father recently purchased and testified he is paying rent to his father of $2,500 per month which the Court notes at times, has been paid by the corporation as shown on the Former Husband's Notice of Filing Documents dated June 24, 2002. He runs a company purchased by his father. The Former Husband has the use of a company credit card, for which he has refused to supply statements. The company has paid filing fees and costs in this proceeding. The company has paid for rental for the Former Husband when

> he comes to Miami for hearings. His father furnishes him an apartment in Coconut Grove when he comes in Miami. . . .
>
> H. The $200,000 from his father Harper Sibley, listed on the Former Husband's June 10, 1999 financial affidavit has been satisfied and no longer exists.
>
> I. The Former Husband's ability to pay the child support agreed to by him at the time of the Marital Settlement Agreement and subsequently ratified and approved by him in the Stipulation of Settlement between Barbara Sibley and Montgomery Blair Sibley which incorporated all prior orders ratified by court order dated February 17, 2000 has not substantially changed and he has and has had the ability to pay support.

App., *Infra* at 3-4.

Former Husband appealed this order to the Florida Third District Court of Appeal.[3] While the appeal was pending, the trial court held a pre-incarceration hearing concerning the Former Husband's ability to pay a purge amount. This hearing resulted in an order of commitment to the Miami-Dade County Corrections Department. Pet., App. at 2-4. The trial court found Former Husband had the ability to pay the past due child support and that he willfully refused to pay the child support obligation. Pet., App. at 3. The trial court refused to abate the finding of contempt or stay the order of incarceration. Pet., App. at 3-4. Former

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[3] The contempt order has recently been affirmed by the Florida Third District Court of Appeal. *Sibley v. Sibley*, Case No. 3D02-2308 (Fla. 3DCA December 3, 2003).

Husband appealed the order of commitment to the Florida Third District Court of Appeal.

On appeal of the commitment order to the Florida Third District Court of Appeal, the "grandfather issue" was raised by Former Husband in his briefs.[4] App., *Infra* at 7-13. As Former Husband noted in his brief:

> Once again, at its core, the trial court is visiting the grandfather's finances, and the grandfather's decisions concerning those assets upon the appellant, which simply is not permitted under Florida contempt law. *The issue should have been the Appellant's ability to pay, not the grandfather's ability to pay*. On the correct issue of the Appellant's ability to pay, he cannot purge or cure in the amount set by the trial court.
>
> App., *Infra* at 11-12.
> (Emphasis Added)

After oral argument on the merits which included argument on the relevance of the regular and systematic payments by Former Husband's Father to Former Husband, the appellate court affirmed the trial court's order of commitment by a 2-1 decision. Pet., App. at 5-16. The majority opinion held:

> [T]he record demonstrates Sibley may command, simply by asking, the payment of the purge amount through his very wealthy father – *who has in effect given many hundreds of thousands*

[4] The "grandfather issue" concerns whether the regular and substantial payments made by Former Husband's father to Former Husband can be considered in determining Former Husband's ability to pay.

> *of dollars to Mr. Sibley for any and every purpose except the discharge of this particular obligation.* Among those are the payment of $250,000 cash for a business which nominally supports him, $200,000 in the "forgiveness" of a "loan" from his father, and large sums directly for the support of Appellant's present wife and his other child. We are convinced that they also include very substantial sums in legal fees and costs in order to avoid payment, as well as the maintenance of the present expensive proceedings to secure his release from prison without having to meet his adjudicated duty to support these children, even in the smallest part.
>
> Pet., App. at 5-6.
> (Emphasis Added)

The majority opinion nowhere mentions the "Tipsy Coachman" rule under which Former Husband predicates his constitutional arguments.[5]

From the decision of the Florida Third District Court of Appeal, Former Husband sought to invoke the discretionary jurisdiction of the Florida Supreme Court. One of the issues raised by Former Husband in his jurisdictional brief to the Florida Supreme Court was the majority's determination that a family member can be responsible for their child's, brother's, or sister's financial obligation. Former Husband did not raise any constitutional issues in

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[5] For an explanation of how the rule that a correct decision will be affirmed even if the trial court's reasoning in reaching the decision is wrong came to be known as the "Tipsy Coachman" rule, *see: Carroway v. Armour & Co.*, 156 So.2d 494 (Fla. 1963).

his jurisdictional brief.[6] The Florida Supreme Court declined to accept the case. Pet., App. at 17-18. The instant petition follows.

RESPONSE TO PETITIONER'S REASONS FOR GRANTING THE PETITION

The gravamen of the argument made by Former Husband is that the application of the "Tipsy Coachman" rule to the case at bar has allegedly deprived him of due process of law since he had neither notice nor an opportunity to be heard on the issue that his ability to pay would be determined based upon a consideration of his assets and the regular and systematic payments made to Former Husband by his father. However as is demonstrated by a review of the trial court's order, App., *Infra* at 1-5, and the Former Husband's brief before the Florida Third District Court of Appeal, App., *Infra* at 6-12, the "Tipsy Coachman" rule is inapplicable to the case at bar because the "grandfather issue" was raised before the trial court, was injected into the appeal by Former Husband who addressed the issue in his brief, and was argued before the Florida Third

[6] Under the Florida Constitution, the Florida Supreme Court may review any decision of a district court of appeal which passes upon a question certified by the district court of appeal to be of great public importance. Article V, Section 3(b)(4), Fla. Const. The district court can certify a question to be of great public importance, *sua sponte*, or a party can request the district court to certify a question as one of great public importance. Fla.R.App.Pro. 9.330(a). Significantly, Former Husband did not request the Florida Third District Court of Appeal to certify the alleged deprivation of due process as a result of the alleged application of the "Tipsy Coachman" rule to the Florida Supreme Court as one of great public importance.

District Court of Appeal which applied well settled principles of Florida law to the factual findings of the trial court to reach its conclusion.[7] Former Husband specifically argued both in his brief and at oral argument that his father's assets were irrelevant to the issue of Former Husband's ability to pay the purge amount. App., *Infra* at 11-12. Consequently, not only did Former Husband have notice and opportunity to be heard with regard to the "grandfather issue," he raised and discussed this very issue in his brief to the Florida Third District Court of Appeal. The petition should be denied.

In his petition, Former Husband argues that the trial court's contempt order was in the nature of criminal rather than civil contempt. Former Husband builds upon this contention and concludes that he was denied the fundamental procedural safeguards. Assuming *arguendo* that Former Husband is correct, he does not explain how this raises an *important* question within the meaning of Supreme Court Rule 10(b) worthy of this Court's attention, as opposed to a mere alleged erroneous application of existing precedent.

The distinction between civil contempt and criminal contempt is that civil contempt is coercive which is avoidable

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[7] Under Florida law, cash gifts given to a parent or spouse on a regular basis may be considered for the purposes of determining income and ability to pay. *Ordini v. Ordini*, 701 So.2d 663 (Fla. 4DCA 1997); *Cooper v. Kahn*, 696 So.2d 1186 (Fla. 3DCA 1997), *rev. den.* 717 So.2d 529 (Fla. 1998). For this reason, if the merits of the lower court's opinion are considered, it reached a permissible and correct decision based upon the evidence contained in the appellate record with regard to the regular and systematic financial connection between Former Husband and his father.

through compliance with an order while criminal contempt is a crime. *See: International Union, United Mineworkers of America v. Bagwell*, 512 U.S. 821, 114 S.Ct. 2552, 129 L.Ed.2d 642 (1994); *Shillitani v. United States*, 384 U.S. 364, 86 S.Ct. 1531, 16 L.Ed.2d 622 (1966). As this court noted in *Hicks ex rel. Feiock v. Feiock*, 485 U.S. 624, 634-635, 108 S.Ct. 1423, 1431-1432, 99 L.Ed.2d 721 (1988), the character of the relief itself must be examined to determine whether the contemnor can avoid the sentence by complying with the terms of the original order. Applying this rule of law to both the underlying contempt order, App., *Infra* at 1-5, and the commitment order, Pet., App. at 2-4, the contempt is civil in nature because all Former Husband had to do was pay the purge amount to be released from incarceration. As the Florida Third District Court of Appeal noted below:

> The primary point of the appellant . . . is that the record does not support the express finding below that he has the present ability to pay the purge amount of $100,000. We disagree.
>
> . . . In these circumstances, which demonstrate the very epitome of a wilful, contemptuous refusal to obey a binding order of court, the rule that all sums from whatever source available to the contemnor-obligor must be considered to determine his "ability to pay" is peculiarly relevant. [Citations omitted]. Its application compels the rejection of the appellant's argument that, on the merits, he should not be in jail for *civil contempt*. In our judgment, he is in the right place for the right reason.
>
> Pet., App. at 5-6
> (Emphasis Added)

As recognized by the Florida appellate court and as is established by a review of the contempt and commitment orders, the nature of the contempt is civil in nature because Former Husband holds the key to the jail house door. Former Husband's arguments to the contrary are meritless and certainly do not establish the presence of an important federal question worthy of the attention of this Honorable Court.

CONCLUSION

For all the foregoing reasons, the Former Husband's Petition should be denied.

Dated: December 8, 2003

Respectfully submitted,

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IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

IN RE: The Marriage of

BARBARA SIBLEY,

Petitioner/Former Wife,

and

MONTGOMERY BLAIR SIBLEY,

Respondent/Former Husband.

_____/

FAMILY DIVISION

CASE NO.: 94-18177 FC 19

(Filed Aug. 9, 2002)

ORDER ON FORMER WIFE'S MOTION FOR CONTEMPT FOR FAILURE TO PAY CHILD SUPPORT DATED JANUARY 10, 2002 AND FORMER WIFE'S AMENDED MOTION FOR CONTEMPT FOR FAILURE TO PAY CHILD SUPPORT DATED APRIL 17, 2002

THIS MATTER having come on to be heard on June 4, 5, 6, and 7, 2002 and July 1, 2002 upon the Former Wife's Motion for Contempt for Failure to Pay Child Support dated January 10, 2002 and Former Wife's Amended Motion for Contempt for Failure to Pay Child Support dated April 17, 2002, together with other motions, the Court finds as follows:

A. The parties were divorced by Final Judgment of Dissolution of Marriage entered on September 20, 1994 which incorporated the Marital Settlement Agreement of the parties dated September 20, 1994.

B. Pursuant to the Marital Settlement and Final Judgment, paragraph 12, if the minor children's primary physical residence is with the Mother, and the Father

should move out of the South Florida area so that the Husband cannot share in the day-to-day care and parenting of the children, the Former Husband was to pay to the Former Wife not less than the sum of $4,000.00 per month for all three (3) children (or divided into thirds one-third for each child) until the completion of their individual college educations, as child support in addition to all of the Former Husband's other obligations set forth in the Marital Settlement Agreement.

C. The Former Husband voluntarily chose to move out of the South Florida area in May, 2000, and has not shared in the day-to-day care and parenting of the children since said date.

D. The Former Husband has not furnished any child support to the Former Wife since May, 2000.

E. The Former Husband is in arrears in child support in the amount of $4,000.00 a month for twenty-five (25) months during which he has not been in South Florida and the children's primary physical residence has been with the Former Wife.

F. The Court has reviewed the Former Husband's initial Financial Affidavit filed September 20, 1994 which reflects a gross income of $4,232.00 per month. The Husband has filed subsequent affidavits in these proceedings including an affidavit dated June 10, 1999 showing a net income of $2,918.00 per month, living expenses of $5,351.00 per month and a negative net worth of $121,900.00. The Former Husband's supplemental financial affidavit filed on October 19, 1998 shows a net income of negative $1,435.00 per month, monthly expenses of $6,000.00 per month and a negative net worth of $57,400.00.

The Former Husband testified that his present gross income was $37,500.00 annually from his employment (business owned by his father), and that his current wife's gross income was also in excess of $30,000.00. Additionally, the Former Husband continues to practice law and has taken in retainers of more than $17,000.00 so far this year. The Former Husband has not produced one check or bank statement. Instead he has produced computer generated ledger sheets allegedly from Alodus Corporation, no paycheck stubs for him or his wife, no credit card statements, no bank statements or tax returns.

G. The Former Husband is currently living in a home his father recently purchased and testified he is paying rent to his father of $2,500.00 per month which the Court notes, at times, has been paid by the corporation as shown on the Former Husband's notice of Filing Documents dated June 24, 2002. He runs a company purchased by his father. The Former Husband has the use of a company credit card, for which he has refused to supply statements. The company has paid filing fees and costs in this proceeding. The company has paid rental cars for the Former Husband when he comes to Miami for hearings. His father furnishes him an apartment in Coconut Grove when he comes to Miami. His wife drives a BMW. His child, Sasha, is in private day care/school. His wife saves money for Sasha's future education.

H. The $200,000.00 loan from his father, Harper Sibley, listed on the Former Husband's June 10, 1999 Financial Affidavit has been satisfied and no longer exists.

I. The Former Husband claims he has given the sterling silver he received in the dissolution, which was valued at $15,900.00 according to the Memorandum of

Understanding previously filed in the case, to his current wife.

J. Despite showing deficits of $50,000.00-$100,000.00 annually to live, the Former Husband has no debt other than the court-ordered judgments arising out of litigation with his Former Wife.

K. The Former Husband has not demonstrated any substantial change in circumstances in his income or lifestyle from the time he entered into the Marital Settlement Agreement to the present time.

L. The Former Husband's ability to pay the child support agreed to by him at the time of the Marital Settlement Agreement and subsequently ratified and approved by him in the *Stipulation of Settlement between Barbara Sibley and Montgomery Blair Sibley* which incorporated all prior orders ratified by Court Order dated February 17, 2000 has not substantially changed and he has and has had the ability to pay said support.

WHEREFORE, IT IS ORDERED AND ADJUDGED as follows:

1. The Former Husband, MONTGOMERY BLAIR SIBLEY, is in contempt of this Court for failure to pay child support of $4,000.00 per month for 25 months pursuant to the Final Judgment.

2. The Former Husband owes to the Former Wife the sum of $100,000.00 as and for past due child support.

3. The Former Husband at all times from May, 2000 had the present financial ability to pay but wilfully or intentionally failed and refused to do so and wilfully violated the Order of this Court.

4. The Former Husband is hereby sentenced to ninety (90) days in the Dade County jail beginning January 1, 2003, unless prior to that time the Former Husband chooses to purge himself of contempt as follows:

a. Payment to the Former Wife of the sum of $30,000.00 on October 1, 2002, $30,000.00 on November 1, 2002 and $40,000.00 on December 1, 2002, and remaining current in his child support of $4,000.00 per month.

5. Any Petition for Modification filed by the Former Husband is denied.

6. The Former Wife is entitled to attorney's fees and costs. The Court reserves jurisdiction as to the amount.

DONE AND ORDERED in Chambers, at Miami, Miami-Dade County, Florida, this 5 day of August, 2002.

/s/ Maxine Cohen Lando
CIRCUIT COURT JUDGE

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IN THE DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT

CASE NO.

MONTGOMERY BLAIR SIBLEY,

Appellant,

vs.

BARBARA SIBLEY,

Appellee. /

APPELLANT'S INITIAL BRIEF
(With Separately Bound Appendices)

(Filed Nov. 27, 2002)

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* * *

II. The Defects Contained in the August 5, 2002 Order

a. The Grandfather Issue

The trial court's order of November 22, 2002, incorporates by reference its prior contempt orders of August 5, 2002. The original orders of incarceration sought to support the purge amounts on a finding that the Appellant may call upon a purportedly wealthy family member to loan or otherwise provide Appellant with money, and/or the Appellant may use his position as trustee over certain

trust funds belonging to his children to pay these sums. Both of these grounds for the establishment of this purge amount are also contrary to Florida law, and any continued incarceration of Appellant on these supplemental grounds should be prohibited by this Court as well.

First, the August 5, 2002 order holds Appellant in contempt because of the paternal grandfather's testimony that he has chosen not to pay for the grandchildren's private school, even though he pays for other grandchildren's educational expenses. From this testimony, the trail court essentially blamed the Appellant for his grandfather's discriminatory generosity. The trial court claimed that the grandfather's decision had to have been the result of lobbying or persuasion by the Appellant, although there is no evidence whatsoever to support that conclusion. Or perhaps the trial court's conclusion was based on the proposition that Appellant did not try – or try hard enough – to get the grandfather to pay for the educational expenses. Regardless of why grandfather does not pay, the grandfather's failure to do so cannot serve as a basis to support a civil contempt finding.

If the grandfather does not pay because of some conduct, action, or inaction on the part of the Appellant, that would be an indirect criminal contempt issue for the court, and cannot serve as a basis for civil contempt. See *Senterfitt v. Oaks*, 773 So.2d 431, 433 (Fla. 1st DCA 2001); *Perez v. Perez*, 599 So.2d 682, 683 (Fla.3d DCA 1992); *Ponder v. Ponder*, 438 So.2d 541, 543 (Fla. 1st DCA 1983). In the civil contempt context, the issue of grandfather "not stepping to the plate" is irrelevant when one considers what it is that *Appellant* can do financially to cure or purge.

The substance of this particular point must be reemphasized because it lies at the heart of the problem in the trial court. The theme throughout the August 5, 2002 order is that Appellant should be incarcerated because he either has not or cannot persuade his father to pay the private school educational expenses. As this Court can see, part of the sanction being imposed in this case has nothing whatsoever to do with *Appellant's ability to pay*; instead, Appellant is seemingly being incarcerated due to *his father's ability to pay*. While it may be inequitable, discriminatory, or even unfair, what the grandfather does with the grandfather's money is the grandfather's business. It has nothing to do with the Appellant's assets and any sanction of contempt for a failure to persuade the grandfather to spend the grandfather's money on Appellant's children would have to be considered, if at all, in an indirect criminal contempt proceeding. Viewed in this factual context, the August 5, 2002 order is one which seeks to punish Appellant for the past and present failure to get the grandfather to pay.[3]

The concept of holding a person in civil contempt for failing to secure a loan or to otherwise arrange for another to make payments owed by the contemnor has been directly addressed by this Court in *Perez v. Perez*, 599 So.2d 682, 683 (Fla. 3d DCA 1992). In *Perez*, an appeal

[3] This is not to suggest that the grandfather has acted improperly in any manner. He may very well have legitimate reasons for paying educational expenses for grandchildren in the manner he does. The only point is that even if the grandfather has no good reason to discriminate against certain of his grandchildren, the money being discussed here is within the exclusive control of and belongs to the grandfather, not the Appellant.

was taken from a post-dissolution of marriage order adjudicating Perez in civil contempt for failure to pay $8,100 attorney's fees and costs incurred by his ex-spouse and imposing 30 days incarceration, with a provision allowing Perez to purge the contempt by paying the entire amount due by a date certain. Perez did not dispute that he owed the amount. However, he contended that, through no fault of his own, he did not have the present ability to pay the purge amount. In the trial court, there was a finding of a present ability to pay, and the finding of contempt, which was predicated upon a conclusion that Perez had the ability to pay because he could "readily borrow the funds from relatives." *Id.*

Characterizing the trial court's finding that Perez could obtain a loan from his relatives as "outrageous", the Third District reversed the order and directed Perez be released from custody. In doing so, this Court noted:

> The purpose of a civil contempt proceeding is to obtain compliance on the part of a person subject to an order of the court. *Bowen v. Bowen*, 471 So.2d 1274, 1277 (Fla.1985). Where incarceration is under consideration as a possible remedy for a civil contempt, there must be "a separate, affirmative finding that the contemnor possesses the present ability to comply with the purge conditions set forth in the contempt order." *Id.* at 1279. While making that determination, the court may look to all of the contemnor's assets from which the amount might be obtained. *Id. See Russell v. Russell*, 559 So.2d 675 (Fla. 3d DCA 1990).

* * *

> It is clear that under *Bowen*, the instant inquiry must be directed to the contemnor's own assets, not those of his relatives. Thus, there must be a new hearing. *Russell*, 559 So.2d at 676. As noted in *Russell*, the *Bowen* case envisions a two-stage inquiry in civil contempt proceedings: first, a determination of whether the respondent has willfully violated the court order, *id.* at 1278-79; second, the decision as to what remedy is appropriate. *Id.* at 1279.
>
> In the instant case, testimony was taken which may have supported the theory that Perez had purposefully transferred certain assets to his father, who was also his employer. If, in actuality, Perez is vested with the actual resources with which to purge the contempt order, the remedy of incarceration may be ordered. *Scapin v. Scapin*, 553 So.2d 319 (Fla. 1st DCA 1989). Otherwise, as to the order of civil contempt, the court is limited to such non-incarceration options as payroll deductions and similar alternatives as outlined in *Bowen*, 471 So.2d at 1279. See *Russell*, 559 So.2d at 677, citing *Knowles v. Knowles*, 522 So.2d 477, 479 (Fla. 5th DCA), *review denied*, 531 So.2d 1354 (Fla.1988). Willful disobedience of an order of the court through the intentional divestiture of assets may be punished by incarceration in a criminal contempt proceeding with the attendant due process safeguards, *Bowen*, 471 So.2d at 1279; *Russell*, 559 So.2d at 677, and this option is still open to the trial court. However, in the instant civil proceeding, if, upon remand, the trial court determines that the contemnor does not, himself, presently have the funds to meet the court's order, incarceration cannot be ordered.

Perez, 599 So.2d at 683.

Just as in *Perez*, the trial court is "outrageously" – and wrongly – equating the family member's financial condition with the financial condition of the Appellant. Just as in *Perez*, the contemnor works for his father in his father's company. Just as in *Perez*, there is suggestion in the trial court's order that Appellant divested himself of assets.[4] Just as in *Perez*, there are allegations of willful disobedience. And just as in *Perez*, Appellant has been wrongly incarcerated. This Court should follow *Perez* and discharge Appellant from custody forthwith.

This same problem permeates the entire discussion of the grandfather in other contexts of the August 5, 2002 educational support order. For example, the order continues by noting that the grandfather owns the company for whom Appellant works, and that the grandfather owns the residence in which the Appellant lives. Neither of these facts are particularly relevant to a determination of an ability to pay, except as it relates to the issue of the Appellant's current salary and rent, which was disclosed to the court in judicial proceedings. These issues were set forth as part of the financial affidavit filed with the court at the October 9, 2002 hearing, and showed the Appellant with a negative income stream, negative financial worth, and no assets of note.

Once again, at its core, the trial court is visiting the grandfather's finances, and the grandfather's decisions concerning those assets upon the Appellant, which simply

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[4] Appellant vehemently disagrees with this finding, but it nonetheless is part of the stated basis for the trial court's orders and therefore must be acknowledged as an alleged ground supporting the civil contempt finding.

is not permitted under Florida contempt law. The issue should have been the Appellant's ability to pay, not the grandfather's ability to pay. On the correct issue of the Appellant's ability to pay, he cannot purge or cure in the amount set by the trial court.

* * *